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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAN DIEGO COASTKEEPER, a non-profit
corporation; COASTAL
ENVIRONMENTAL RIGHTS
FOUNDATION,
a non-profit corporation,

Plaintiffs,

v.

Precision Metals Products, Inc., a California
corporation,

Defendant.

Civil Case No.: **'16CV2080 W BGS**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 Coastal Environmental Rights Foundation, (“CERF”) and San Diego Coastkeeper
2 (collectively referred to herein as “Plaintiffs”), by and through their counsel, hereby
3 allege:

4 **I. JURISDICTION AND VENUE**

5 1. This is a civil suit brought under the citizen suit enforcement provisions of
6 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water
7 Act” or the “CWA”). This Court has subject matter jurisdiction over the parties and this
8 action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C.
9 §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the
10 Constitution and laws of the United States).

11 2. On February 29, 2015, Plaintiffs issued a 60-day notice letter (“Notice
12 Letter”) to Precision Metals Products, Inc., (“Precision Metals Products” or
13 “Defendant”) regarding its violations of the Clean Water Act, and of Plaintiffs’ intention
14 to file suit against Defendant. The Notice Letter was sent to the registered agent for
15 Precision Metals Products, as required by 40 C.F.R. § 135.2(a)(1), the Facility
16 (Precision Metals Products), as well as the Administrator of the United States
17 Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, the
18 Executive Director of the State Water Resources Control Board (“State Board”), and the
19 Executive Officer of the Regional Water Quality Control Board, San Diego Region
20 (“Regional Board”) as required by CWA, 33 U.S.C. § 1365(b)(1)(A). A true and correct
21 copy of the Notice Letter is attached hereto as Exhibit A and incorporated herein.

22 3. More than sixty days has passed since the Notice Letter was served on
23 Defendant and the State and Federal agencies. Plaintiffs are informed and believe, and
24 thereon allege, that neither the EPA nor the State of California has commenced or is
25 diligently prosecuting an action to redress the violations alleged in this complaint. (33
26 U.S.C. § 1365(b)(1)(B)). This action is not barred by any prior administrative penalty
27 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

28 4. Venue is proper in the Southern District of California pursuant to Section

505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district.

II. INTRODUCTION

5. This complaint seeks relief for the Defendant's unlawful discharge of pollutants into waters of the United States from its operations at 850 W Bradley Ave. El Cajon California 92020 ("Precision Metals Facility" or "Site"). Specifically, Defendant discharges storm water runoff from the Site into storm drains, Forester Creek, San Diego River, and ultimately the Pacific Ocean (collectively referred to as the "Receiving Waters"). This complaint also seeks relief for Defendant's violations of the filing, monitoring, reporting, discharge and management practice requirements, and other procedural and substantive requirements of California's General Permit for Discharges Associated with Industrial Activities (*National Pollution Discharge Elimination System* ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ, as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ) ("Industrial Permit"). Defendant's violations of the Clean Water Act and the Industrial Permit are ongoing and continuous.

6. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from industrial operations such as the Precision Metals Facility, flow into El Cajon storm drain systems, Forester Creek, San Diego River, and ultimately the Pacific Ocean. This discharge of pollutants in storm water from industrial activities such as the Precision Metals Facility contributes to the impairment of downstream waters and compromises or destroys their beneficial uses.

III. PARTIES

A. San Diego Coastkeeper and Coastal Environmental Rights Foundation

7. Plaintiff San Diego Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California.

8. San Diego Coastkeeper is committed to protecting and restoring the San Diego region's water quality and supply. A member of the international Waterkeeper

1 Alliance, San Diego Coastkeeper's main purpose is to preserve, enhance, and protect the
2 San Diego's marine sanctuaries, coastal estuaries, wetlands and bays from illegal
3 dumping, hazardous spills, toxic discharges and habitat degradation.

4 9. San Diego Coastkeeper's office is located at 2825 Dewey Road, Suite 200,
5 San Diego, California, 92106.

6 10. Plaintiff CERF is a non-profit public benefit corporation organized under
7 the laws of the State of California.

8 11. CERF's office is located at 1140 South Coast Highway 101, Encinitas
9 California, 92024.

10 12. CERF was founded by surfers in North San Diego County and active
11 throughout California's coastal communities. CERF was established to aggressively
12 advocate, including through litigation, for the protection and enhancement of coastal
13 natural resources and the quality of life for coastal residents. One of CERF's primary
14 areas of advocacy is water quality protection and enhancement.

15 13. Plaintiffs have thousands of members who live and/or recreate in and
16 around Forester Creek, San Diego River, and ultimately the Pacific Ocean.

17 14. Plaintiffs' members use and enjoy the Receiving Waters to fish, sail, boat,
18 kayak, paddle board, surf, swim, hike, view wildlife, and engage in scientific study
19 including monitoring activities, among other activities. Defendant discharges pollutants
20 from the Sites to the Receiving Waters used by Plaintiffs' members. Thus, Defendant's
21 discharge of pollutants impairs Plaintiffs' members' uses and enjoyment of the
22 Receiving Waters.

23 15. The interests of Plaintiffs' members have been, are being, and will
24 continue to be adversely affected by the Defendant's failure to comply with the Clean
25 Water Act and the Industrial Permit. The relief sought herein will redress the harms to
26 Plaintiffs caused by Defendant's activities. Continuing commission of the acts and
27 omissions alleged above will irreparably harm Plaintiff's members, for which harm they
28 have no plain, speedy or adequate remedy at law.

B. The Precision Metals Facility Owners and/or Operators

16. Plaintiffs are informed and believe that Precision Metals Products, Inc. is a private corporation organized under the laws of the State of California, and is located in El Cajon, California.

17. Plaintiffs are informed and believe that Precision Metals Products, Inc. has owned and operated the Precision Metals Facility located at 850 W Bradley Avenue, El Cajon, California 92020 since at least 2007.

IV. STATUTORY BACKGROUND

A. The Clean Water Act

18. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge complies with various enumerated sections of the CWA. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Section 402(p) of the CWA establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. (33 U.S.C. § 1342(p)). States with approved NPDES permit programs are authorized by Section 402(b) to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. (33 U.S.C. § 1342).

20. Section 402(b) of the CWA allows each state to administer its own EPA-approved permit for storm water discharges. (33 U.S.C. § 1342(b)). In California, the State Board is charged with regulating pollutants to protect California's water resources.

21. Section 301(b) requires that, by March 31, 1989, all point source dischargers, including those discharging polluted stormwater, must achieve technology-based effluent limitations by utilizing the Best Available Technology Economically Achievable (BAT) for toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology (BCT) for conventional pollutants. See 33 U.S.C. §

1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

22. The Industrial Permit is a statewide general NPDES permit issued by the State Board pursuant to Section 402 of the CWA that regulates the discharge of pollutants from industrial sites. (33 U.S.C. § 1342).

23. Section 505(a)(1) of the CWA provides for citizen enforcement actions against any “person” who is alleged to be in violation of an “effluent standard or limitation... or an order issued by the Administrator or a State with respect to such a standard or limitation.” (33 U.S.C. § 1365(a)(1)).

24. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).

25. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day per violation for all violations occurring after January 27, 2009. (33 U.S.C. § 1319(d); Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4).

26. Section 505(d) of the Clean Water Act permits prevailing parties to recover costs, including attorneys’ and experts’ fees. (33 U.S.C. § 1365(d)).

B. California’s Industrial Permit

27. The Industrial Permit, NPDES General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ is an NPDES permit adopted pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(b) and 40 C.F.R § 123.25. In order to discharge storm water lawfully in California, industrial dischargers must secure coverage under the Industrial Permit and comply with its terms, or obtain and comply with an individual NPDES permit. The Industrial Permit as amended pursuant to Order No. 2014-0057-DWQ became effective July 1, 2015 (“New Industrial Permit”).

28. Failure to comply with the Industrial Permit or New Industrial Permit constitutes a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A.).

1 29. Discharge Prohibitions A(1) of the Industrial Permit and III.B. of the New
2 Industrial Permit prohibit the direct or indirect discharge of materials other than storm
3 water (“non-storm water discharges”), which are not otherwise regulated by an NPDES
4 permit, to the waters of the United States. Discharge Prohibition A(2) of the Industrial
5 Permit and III.C. of the New Industrial Permit prohibit storm water discharges and
6 authorized non-storm water discharges which cause or threaten to cause pollution,
7 contamination, or nuisance.

8 30. Effluent limitations B(3) of the Industrial Permit and Sections I.D and
9 V.A. of the New Industrial Permit require facility operators to reduce or prevent
10 pollutants associated with industrial activity in storm water discharges and authorized
11 non-storm water discharges through the implementation of Best Available Technology
12 Economically Achievable (“BAT”) for toxic pollutants and Best Conventional Pollutant
13 Control Technology (“BCT”) for conventional pollutants.

14 31. Effluent limitations B(1) of the Industrial Permit and Sections I.K and
15 V.B. of the New Industrial Permit require facility operators of facilities in specific
16 industrial categories to comply with Effluent Limitations Guidelines at 40 C.F.R.
17 Chapter 1 Subchapter N.

18 32. Industrial Permit Receiving Water Limitation C(1) and New Industrial
19 Permit Receiving Water Limitation VI.B. prohibit storm water discharges and
20 authorized non-storm water discharges to surface or groundwater that adversely impacts
21 human health or the environment.

22 33. Industrial Permit Receiving Water Limitation C(2) and New Industrial
23 Permit Receiving Water Limitation VI.A. prohibit storm water discharges and
24 authorized non-storm water discharges that cause or contribute to an exceedance of an
25 applicable water quality standard in a Statewide Water Quality Control Plan or the
26 applicable Regional Board’s Basin Plan.

27 34. Section A(1) and Provision E(2) of the Industrial Permit require
28 dischargers to have developed and implemented a Storm Water Pollution Prevention

1 Plan ("SWPPP") by October 1, 1992, or prior to beginning industrial activities, that
2 meets all the requirements of the Industrial Permit. Sections X.A. and B. of the New
3 Industrial Permit require development and implementation of site-specific SWPPPs by
4 July 1, 2015 or upon commencement of industrial activity.

5 35. The objective of the SWPPP is to identify and evaluate sources of
6 pollutants associated with industrial activities that may affect the quality of storm water
7 discharges from the Sites, and identify and implement site-specific Best Management
8 Practices ("BMPs") to reduce or prevent pollutants associated with industrial activities
9 in storm water discharges. (Industrial Permit, Section A(2); New Industrial Permit,
10 Section X.C.1).

11 36. To ensure its effectiveness, the SWPPP must be evaluated on an annual
12 basis, and it must be revised as necessary to ensure compliance with the Permit.
13 (Industrial Permit, Sections A(9), (10); New Industrial Permit, Sections XA. And
14 X.B.1.).

15 37. Sections A(3) through A(10) of the Industrial Permit and Sections X.A to
16 X.I. of the New Industrial Permit set forth the requirements for a SWPPP.

17 38. The SWPPP must include a site map showing the facility boundaries,
18 storm water drainage areas with flow patterns, nearby water bodies, the location of the
19 storm water collection, conveyance and discharge system, structural control measures,
20 areas of actual and potential pollutant contact, and areas of industrial activity. (Industrial
21 Permit, Section A(4); New Industrial Permit, Section X.E.).

22 39. Dischargers are also required to prepare and implement a monitoring and
23 reporting program ("M&RP"). (Industrial Permit, Sections E(3), B(1); New Industrial
24 Permit, Section XI).

25 40. The objective of the M&RP is to ensure that BMPs have been adequately
26 developed and implemented, revised as necessary, and to ensure that storm water
27 discharges are in compliance with the Industrial Permit (up to July 1, 2015) and New
28 Industrial Permit (July 1, 2015 and thereafter) Discharge Prohibitions, Effluent

1 Limitations, and Receiving Water Limitations. (Industrial Permit, Section B(2); New
2 Industrial Permit, Finding J.56).

3 41. The Industrial Permit and New Industrial Permit require dischargers to
4 conduct visual observations for the presence of unauthorized non-storm water
5 discharges, to document the source of any discharge, and to report the presence of any
6 discolorations, stains, odors, and floating materials in the discharge.

7 42. The Industrial Permit and New Industrial Permit require dischargers to
8 visually observe drainage areas during the wet season (October 1 - May 30) and to
9 document the presence of any floating and suspended materials, oil and grease,
10 discolorations, turbidity, or odor in the discharge, and the source of any pollutants.

11 43. Both the Industrial Permit and New Industrial Permit require dischargers
12 to maintain records of observations, observation dates, locations observed, and
13 responses taken to eliminate unauthorized non-storm water discharges and to reduce or
14 prevent pollutants from contacting non-storm water and storm water discharges.

15 44. The Industrial Permit requires dischargers to collect a sample from all
16 discharge points during the first storm event of the wet season and during at least one
17 other storm event of the wet season, for a total of two samples per wet season.
18 (Industrial Permit, Section (B)(5)). The New Industrial permit requires dischargers to
19 collect and analyze storm water samples from two storm events with the first half of
20 each reporting year (July 1 to December 31) and two from the second half (January 1 to
21 June 30). (New Industrial Permit, Section XI.B.2.).

22 45. Dischargers must analyze each sample for pH, total suspended solids, oil
23 and grease, and for toxic chemicals and other pollutants likely to be present in
24 significant quantities in the storm water discharged from the facility. (Industrial Permit,
25 Section B(5)(c); New Industrial Permit, Section XI.B.6).

26 46. Dischargers must submit "Annual Reports" to the Regional Board in July
27 of each year. (Industrial Permit, Section B(14); New Industrial Permit, Section XVI.A.).

28 /./.

V. STATEMENT OF FACTS

A. Precision Metals Facility

47. Plaintiffs are informed, believe, and thereon allege the Precision Metals Facility is a 4.67 acre metals manufacturing facility. The Precision Metals Facility belongs to Sector AA of the Industrial Permit and its standard industrial classifications (SIC) code are Fabricated Metals Products, 3462 and 3463.

48. Plaintiffs are informed, believe, and thereon allege the Precision Metals Facility primarily manufactures surgical implants and aerospace grade forgings.

49. Plaintiffs are informed, believe, and thereon allege the Precision Metals Facility conducts support operations consisting of machining, heat treating, and surface finishing.

50. Plaintiffs are informed, believe, and thereon allege various industrial materials comprised of metals, oils, lubricants, acids, wastewater, dissolved solids, debris, and nitrogen that are utilized and stored onsite.

51. Plaintiffs are informed, believe, and thereon allege the Precision Metals Facility Owners and/or Operators engage in the following industrial operations: hydraulic forging, pneumatic forging, mechanical forging, machining, heat treating, surface finishing, surface treatment, loading and unloading waste, scrap, and metallic raw material, oil-water separation, and shipping and receiving of containers.

52. Plaintiffs are informed, believe, and thereon allege particulates from operations, oil, grease, suspended solids, hazardous waste, and metals such as aluminum, copper, lead, iron and zinc materials are exposed to storm water at the Precision Metals Facility.

53. Plaintiffs are informed, believe, and thereon allege that storm water is discharged from two discharge points at the Facility into stormwater conveyance systems.

54. The Precision Metals Facility discharges into storm water conveyance systems that discharge into Forester Creek, San Diego River, and ultimately the Pacific

1 Ocean.

2 55. The EPA promulgated regulations for the Section 402 NPDES permit
3 program defining waters of the United States. (See 40 C.F.R. § 122.2). The EPA
4 interprets waters of the United States to include not only traditionally navigable waters
5 but also other waters, including waters tributary to navigable waters, wetlands adjacent
6 to navigable waters, and other waters including intermittent streams that could affect
7 interstate commerce. The CWA requires any person who discharges or proposes to
8 discharge pollutants into waters of the United States to submit an NPDES permit
9 application. (40 C.F.R. § 122.21).

10 56. The Clean Water Act confers jurisdiction over non-navigable waters that
11 are tributary to traditionally navigable waters where the non-navigable water at issue
12 has a significant nexus to the navigable water. (See *Rapanos v. United States*, 547 U.S.
13 715 (2006)). A significant nexus is established if the “[receiving waters], either alone or
14 in combination with similarly situated lands in the region, significantly affect the
15 chemical, physical, and biological integrity of other covered waters.” (*Id.* at 780).

16 57. A significant nexus is also established if waters that are tributary to
17 navigable waters have flood control properties, including functions such as the
18 reduction of flow, pollutant trapping, and nutrient recycling. (*Id.* at 783).

19 58. Information available to Plaintiffs indicates that each of the surface waters
20 into which the Precision Metals Facility discharges polluted storm water are tributaries
21 to traditional navigable waters, such as the San Diego River and the Pacific Ocean.

22 59. Plaintiffs are informed, believe, and thereon allege the Precision Metals
23 Facility’s polluted discharges cause, threaten to cause, and/or contribute to the
24 impairment of water quality in Forester Creek and the San Diego River. Elevated levels
25 of metals, nutrients, and sedimentation have resulted in the inability of Forester Creek
26 and the San Diego River to support its beneficial uses.

27 60. Water Quality Standards are pollutant concentration levels determined by
28 the State Board and the EPA to be protective of the beneficial uses of the receiving

1 waters. Discharges above Water Quality Standards contribute to the impairment of the
2 receiving waters' beneficial uses.

3 61. The applicable Water Quality Standards include, but are not limited to,
4 those set out by the State of California in the Criteria for Priority Toxic Pollutants, 40
5 C.F.R. § 131.38, ("California Toxics Rule" or "CTR") and in the Basin Plan. The CTR
6 limits are, in part, as follows: lead – .065 milligrams per liter (mg/L); copper – .013
7 mg/L; zinc – .12 mg/L. These numeric criteria are set to protect human health and the
8 environment in the State of California. The CTR limits represented are the maximum
9 concentration levels permissible to achieve health and environmental protection goals.

10 62. EPA Benchmarks are the pollutant concentrations above which EPA has
11 determined are indicative of a facility not successfully developing or implementing
12 BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants. (See
13 Multi-Sector General Permits for Stormwater Discharges Associated with Industrial
14 Activity (MSGP), 2015, §§6.2.1, 8.AA, Table 8.AA-1). The benchmark values provide
15 an appropriate level to determine whether a facility's storm water pollution prevention
16 measures are successfully implemented. (MSGP Fact Sheet, p. 52). Failure to conduct
17 and document corrective action and revision of control measures in response to
18 benchmark exceedances constitutes a permit violation. (*Id.*, at p. 65).

19 63. EPA has established the following sector-specific benchmark values for
20 Sector AA, Fabricated Metal Products Facilities: aluminum: 0.75 mg/L; iron: 1.0 mg/L;
21 zinc: 0.04-0.26¹; nitrate plus nitrate nitrogen: 0.68 mg/L. (MSGP, §8.AA, Table 8.AA-
22 1).

23 64. The Regional Board's Basin Plan establishes water quality objectives,
24 implementation plans for point and nonpoint source discharges, and prohibitions, and
25 furthers statewide plans and policies intended to preserve and enhance the beneficial
26 uses of all waters in the San Diego region. (See Basin Plan at p. 1-1). The Basin Plan
27

28 ¹ The zinc benchmark is dependent on water hardness.

1 identifies several beneficial uses for regional waters, including for Forester Creek. The
2 Basin Plan establishes the following water quality objectives for the San Diego
3 Hydrologic Unit, including Forester Creek: iron: 0.3 mg/L; pH – not less than 6.5 and
4 not greater than 8.5. (See Basin Plan at Table 3-2; p. 3-25)

5 **B. Past and Present Industrial Activity at the Precision Metals Facility**

6 65. Plaintiffs are informed, believe, and thereon allege that, in its Notice of
7 Intent to Obtain Coverage under Industrial Permit submitted to the Regional Board, the
8 Defendant lists its primary Standard Industrial Classification (“SIC”) code as 3462 for
9 facilities primarily engaged in iron and steel forgings, and secondary SIC code as 3463
10 for facilities primarily engaged in nonferrous forgings.

11 66. Plaintiffs are informed, believe, and thereon allege that the Defendant
12 engages in manufacturing specialty metal products using raw material ferrous and non-
13 ferrous alloys.

14 67. Plaintiffs are informed, believe, and thereon allege that the Defendant
15 engages in raw material procurement and testing, forge and machine tool design, and
16 tool and die fabrication.

17 68. Plaintiffs are informed, believe, and thereon allege that the Defendant
18 engages in post-forging procedures including heat treating, cleaning, chemical milling,
19 and machining forgings into finished items.

20 69. The potential pollutant sources associated with the industrial activities at
21 the Precision Metals Facility include, but are not limited to: the scrap metal outdoor
22 storage areas; metal outdoor storage areas; sandblast room; oil and lubricant storage;
23 oil-water separator; acid-base receiving area; equipment storage area; parking areas;
24 loading and unloading areas; maintenance areas; the manufacturing building; oil tanks;
25 hazardous waste storage areas; and the on-site material handling equipment such as
26 forklifts.

27 70. Plaintiffs are informed, believe, and thereon allege that pollutants present
28 in storm water discharged from the Precision Metals Facility therefore include but are

1 not limited to: toxic metals such as copper, iron, zinc, lead, and aluminum; petroleum
2 products including oil, fuel, grease, transmission fluids, brake fluids, hydraulic oil and
3 diesel fuel; acids and solvents; lubricants; caustics; nitrogen; dissolved solids; total
4 suspended solids and pH-affecting substances; hazardous waste; and fugitive and other
5 dust, dirt and debris.

6 71. Based upon Plaintiffs' investigation, Plaintiffs are informed, believe, and
7 thereon allege Defendant stores metal, hazardous waste, and other materials outside
8 where it is exposed to storm water.

9 72. Plaintiffs are informed, believe, and thereon allege that there are
10 containers stored on-Site that are uncovered and/or uncontained.

11 73. Plaintiffs are informed, believe, and thereon allege that at least two
12 discharge points at the Precision Metals Facility that convey storm water pollution off
13 the site and into area storm water conveyance systems.

14 74. Plaintiffs are informed, believe, and thereon allege that the Precision
15 Metals Facility lacks effective BMPs to control the flow of storm water from the
16 Facility into storm water conveyance systems.

17 75. Suspended solids, metal particles, and other pollutants have been and
18 continue to be conveyed from the Precision Metals Facility into storm drain conveyance
19 systems.

20 76. Plaintiffs are informed, believe, and thereon allege that during rain events
21 at the Precision Metals Facility, storm water carries pollutants from the outdoor storage
22 areas, bins and dumpsters, hazardous waste storage areas; chemical milling area; floor
23 contaminants, equipment, uncontained metal drums, and other sources directly into the
24 storm drain conveyance systems.

25 77. Plaintiffs are informed, believe, and thereon allege that the Precision
26 Metals Facility pollution control measures are ineffective in controlling the exposure of
27 pollutant sources to storm water at the Precision Metals Facility.

28 /./.

C. The Precision Metals Facility and its Associated Discharge of Pollutants

78. Plaintiffs are informed, believe, and thereon allege that with every significant rain event, the Precision Metals Facility discharges polluted storm water from the industrial activities at the facility via the City of El Cajon's storm drain system and into the Receiving Waters.

79. Plaintiffs are informed, believe, and thereon allege that the Receiving Waters into which the Precision Metals Facility discharges polluted storm water are waters of the United States and therefore the Industrial Permit properly regulates discharges to those waters.

80. Surface waters that cannot support their Beneficial Uses listed in the Basin Plan are designated as impaired water bodies pursuant to section 303(d) of the Clean Water Act. According to the 2010 303(d) List of Impaired Water Bodies, Forester Creek is impaired for selenium, bacteria, total dissolved solids, and pH.

81. San Diego River is impaired for toxicity, bacteria, nutrients, low dissolved oxygen, manganese, and total dissolved solids.

82. Because discharges from the Precision Metals Facility contain particulates and metals, the Precision Metals Facility's polluted discharges cause and/or contribute to the impairment of water quality in the Receiving Waters.

83. Plaintiffs are informed, believe, and thereon allege that the storm water discharged from the Precision Metals Facility has exceeded the CTR Water Quality Standards applicable to zinc in California. For example, Defendant's 2015-2016 monitoring data indicates levels of zinc as high as 8.5 mg/L which is almost 71 times the CTR limit of 0.12 mg/L and the EPA Benchmark value of 0.12 mg/L.² (MSGP, §8.AA, Table 8.AA-1; Fact Sheet, p. 56).

84. Plaintiffs are informed, believe, and thereon allege that the storm water discharged from the Precision Metals Facility has exceeded the CTR Water Quality

² This benchmark value is hardness-dependent. Assuming the 100 mg/L water hardness range applies, the benchmark is .13 mg/L.

Standards applicable to copper in California. For example, Defendant's 2012-2013 annual report monitoring data indicates levels of copper as high as 0.079 mg/L which is 6 times the CTR limit of 0.013 mg/L and 5 times the EPA Benchmark value for copper of 0.014 mg/L.³ (MSGP, Fact Sheet, p. 55).

85. Plaintiffs are informed, believe, and thereon allege that the storm water discharged from the Precision Metals Facility has also exceeded the EPA Benchmark value for aluminum. For example, Defendant's 2015-2016 monitoring data indicates exceedance levels of aluminum at 14.6 mg/L, which almost 20 times the EPA Benchmark value for aluminum of 0.75 mg/L. (MSGP, §8.AA, Table 8.AA-1).

86. Plaintiffs are informed, believe, and thereon allege that the storm water discharged from the Precision Metals Facility has exceeded the EPA Benchmark value for iron. For example, Defendant's 2015-2016 monitoring data indicates exceedance levels of iron at 16.8 mg/L, which is almost 17 times the EPA benchmark value for iron of 1.0 mg/L. (MSGP, §8.AA, Table 8.AA-1, Fact Sheet, p. 55).

87. Plaintiffs are informed, believe, and thereon allege that storm water discharged from the Precision Metals Facility has exceeded the EPA Benchmark value for nitrate + nitrate. For example, Defendant's 2015-2016 monitoring data indicates exceedance levels of nitrate + nitrate at 5.68, which is over 8 times the EPA benchmark value for nitrate + nitrate of 0.68 mg/L (MSGP, §8.AA, Table 8.AA-1, Fact Sheet, p. 55).

88. Plaintiffs are informed, believe, and thereon allege that during every significant rain event that has occurred at the Precision Metals Facility since February 29, 2011 through the present, Defendant has discharged and continues to discharge storm water from the Precision Metals Facility that contains pollutants at levels in violation of the prohibitions and limitations set forth in the Industrial Permit and other applicable Water Quality Standards.

³ This benchmark value is hardness-dependent. Assuming the 100 mg/L water hardness range applies, the benchmark is .014 mg/L.

1 89. Plaintiffs are informed, believe, and thereon allege, from visual
2 observations, sample results, and investigations available to Plaintiffs, the Defendant
3 has failed and continues to fail to develop and/or implement adequate BMPs to prevent
4 the discharge of polluted storm water from the Precision Metals Facility.

5 90. The inadequacy of the BMPs at the Precision Metals Facility is a result of
6 the Defendant's failure to develop and implement an adequate SWPPP and companion
7 M&RP for this Site.

8 91. Storm water discharges from the Precision Metals Facility contain
9 pollutant concentration levels that are above both EPA Benchmarks and applicable
10 Water Quality Standards.

11 92. Plaintiffs are informed, believe, and thereon allege that since at least
12 February 29, 2011 through the present, Defendant has failed to develop and implement
13 BMPs that meet the standards of BAT/BCT at the Precision Metals Facility in violation
14 of Effluent Limitation B(3) of the Industrial Permit and Effluent Limitation I.D. and
15 V.A. of the New Industrial Permit.

16 93. Each day that Defendant has failed and continues to fail to implement
17 adequate BMPs to achieve BAT/BCT constitutes a separate violation of the Industrial
18 Permit and the CWA.

19 94. Based on their investigation of the Precision Metals Facility, Plaintiffs are
20 informed and believe that Defendant has failed to develop and implement an adequate
21 SWPPP since at least February 29, 2011 through the present.

22 95. Each day that Defendant has failed and continues to fail to implement an
23 adequate SWPPP constitutes a separate violation of the Industrial Permit and the CWA.

24 96. Plaintiffs are informed, believe, and thereon allege that Defendant has
25 failed to submit written reports to the Regional Board identifying additional BMPs
26 necessary to achieve BAT/BCT at the Precision Metals Facility since at least February
27 29, 2011, in violation of Receiving Water Limitations C(3) and C(4) of the Industrial
28 Permit and New Industrial Permit Receiving Water Limitations VI.A.-C.

1 97. Each day that Defendant has operated the Precision Metals Facility
2 without meeting this reporting requirement of the Industrial Permit constitutes a
3 separate violation of the Industrial Permit and the CWA.

4 **D. Defendant's Monitoring Program**

5 98. From February 29, 2011 through June 30, 2015, the Precision Metals
6 Facility was required to sample at least two storm events every rainy season in
7 accordance with the sampling and analysis procedures set forth at Industrial Permit
8 Section B(5).

9 99. Sampling and analysis procedures require that a sample be taken from all
10 discharge locations at the Precision Metals Facility and that at least two samples are
11 taken during the wet season: (1) one in the first storm event of a particular wet season;
12 and (2) at least one other storm event in the wet season. (Industrial Permit, Sections
13 B(5) and B(7)).

14 100. From June 30, 2015 through the present the Precision Metals facility is
15 required to sample at least two storm events within the first half of each reporting year
16 (July 1 to December 31) and two storm events within the second half of each reporting
17 year (January 1 to June 30) in accordance with the sampling and analysis procedures in
18 New Industrial Permit Section XI.B.

19 101. Dischargers must analyze each sample for pH, total suspended solids, oil
20 and grease, and for toxic chemicals and other pollutants likely to be present in
21 significant quantities in the storm water discharged from the facility. (Industrial Permit,
22 Section B(5)(c); New Industrial Permit, Section XI.B.6).

23 102. The Precision Metals facility is required to sample for zinc, iron,
24 aluminum, and nitrate plus nitrate. (Industrial Permit, Section B(5)(c); New Industrial
25 Permit, Section XI.B.6).

26 103. All monitoring data must be uploaded to SMARTS within 30 days of
27 obtaining all results for each sampling event. (New Industrial Permit, XI.B.11.a)

28 104. Plaintiffs are informed, believe, and thereon allege that despite the

1 extremely high levels of pollutants reported in the samples that were taken at the
2 Precision Metals Facility, the Defendant has not sampled and submitted sampling
3 reports as required.

4 105. Plaintiffs are informed, believe, and thereon allege that Defendant has not
5 successfully sampled and reported during the 2015-2016 reporting year by failing to
6 report samples within 30 days.

7 106. Plaintiffs are informed, believe, and thereon allege that Defendant has not
8 successfully and consistently sampled and reported for nitrate + nitrite as required by
9 the Permit.

10 107. Information available to Plaintiffs indicates that Defendant has not
11 submitted any reports pursuant to Receiving Water Limitation C(4)(a) within 60-days of
12 becoming aware of levels in its storm water exceeding the EPA Benchmark values or
13 applicable Water Quality Standards, or filed any reports describing the Precision Metals
14 Facility's noncompliance with the Industrial Permit pursuant to Section C(11)(d) of the
15 Industrial Permit.

16 **VI. CLAIMS FOR RELIEF**

17 **FIRST CAUSE OF ACTION**

18 **Discharges of Contaminated Storm Water in**
19 **Violation of the Industrial Permit's Discharge Prohibitions and**
20 **Receiving Water Limitations and the Clean Water Act**
(Violations of 33 U.S.C. §§ 1311(a), 1342)

21 108. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

22 109. Plaintiffs are informed, believe, and thereon allege that as a result of the
23 operations at the Precision Metals Facility, during every significant rain event, storm
24 water containing pollutants harmful to fish, plant, bird life, and human health is
25 discharged from the Precision Metals Facility to the Receiving Waters.

26 110. Plaintiffs are informed, believe, and thereon allege that Defendant's
27 discharges of contaminated storm water have caused, continue to cause, and threaten to
28 cause pollution, contamination, and/or nuisance to the waters of the United States in

1 violation of Discharge Prohibition A(2) of the Industrial Permit and Sections III.C. and
2 VI.C of the New Industrial Permit.

3 111. Plaintiffs are informed, believe, and thereon allege that these discharges of
4 contaminated storm water have, and continue to, adversely affect human health and the
5 environment in violation of Receiving Water Limitation C(1) of the Industrial Permit
6 and Section VI.B. of the New Industrial Permit.

7 112. Plaintiffs are informed, believe, and thereon allege that these discharges of
8 contaminated storm water have caused or contributed to and continue to cause or
9 contribute to an exceedance of Water Quality Standards in violation of Receiving Water
10 Limitation C(2) of the Industrial Permit, and Discharge Prohibition III.D. and Receiving
11 Water Limitation VI.A. of the New Industrial Permit.

12 113. Plaintiffs are informed, believe, and thereon allege that from at least
13 February 29, 2011 through the present, Defendant has discharged, and continues to
14 discharge, contaminated storm water from the Precision Metals Facility to Receiving
15 Waters in violation of the prohibitions of the Industrial Permit. Thus, Defendant is
16 liable for civil penalties for at least 72 violations of the Industrial Permit and the CWA.

17 114. Plaintiffs are informed, believe, and thereon allege that Defendant's
18 violations of the Industrial Permit and the CWA are ongoing.

19 115. Defendant will continue to be in violation of the Industrial Permit
20 requirements each day the Precision Metals Facility discharges contaminated storm
21 water in violation of Industrial Permit prohibitions.

22 116. Every day that Defendant has discharged and/or continues to discharge
23 polluted storm water from the Precision Metals Facility in violation of the Industrial
24 Permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §
25 1311(a).

26 117. By committing the acts and omissions alleged above, Defendant is subject
27 to an assessment of civil penalties for each and every violation of the CWA occurring
28 from February 29, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA,

1 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
2 Inflation, 40 C.F.R. §12.4.

3 118. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
4 § 1365(a). Continuing commission of the acts and omissions alleged above would
5 irreparably harm Plaintiffs and the citizens of the State of California, for which harm
6 they have no plain, speedy, or adequate remedy at law.

7 Wherefore, Plaintiffs pray judgment against Defendant as set forth hereafter.

8
9 **SECOND CAUSE OF ACTION**

10 **Failure to Develop and/or Implement BMPs that Achieve Compliance with Best**
11 **Available Technology Economically Achievable and Best Conventional Pollutant**
12 **Control Technology In Violation of the Industrial Permit and the Clean Water Act**
13 **(Violations of 33 U.S.C. §§1311, 1342)**

14 119. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

15 120. Plaintiffs are informed, believe, and thereon allege that Defendant has
16 failed to develop and/or implement BMPs that achieve compliance with BAT/BCT
17 requirements of the Industrial Permit and the CWA.

18 121. Sampling of the Precision Metals Facility's storm water discharges as well
19 as Plaintiffs' observations of the Precision Metals Facility demonstrate that Defendant
20 has not developed and has not implemented BMPs that meet the standards of
21 BAT/BCT. Thus, Defendant is in violation of Effluent Limitations of the Industrial
22 Permit and New Industrial Permit.

23 122. Plaintiffs are informed, believe, and thereon allege that Defendant has
24 been in daily and continuous violation of the BAT/BCT requirements of the Industrial
25 Permit and the CWA every day since at least February 29, 2011, and of the BAT/BCT
26 requirements of the New Industrial Permit since July 1, 2015.

27 123. Plaintiffs are informed, believe, and thereon allege that Defendant's
28 violations of the Effluent Limitations and the CWA are ongoing.

124. Defendant will continue to be in violation every day the Precision Metals
Facility operates without adequately developing and/or implementing BMPs that

1 achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in
2 storm water discharges at the Precision Metals Facility.

3 125. Every day that Defendant operates the Precision Metals Facility without
4 adequately developing and/or implementing BMPs that achieve BAT/BCT in violation
5 of the Industrial Permit or New Industrial Permit is a separate and distinct violation of
6 Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

7 126. By committing the acts and omissions alleged above, Defendant is subject
8 to an assessment of civil penalties for each and every violation of the CWA occurring
9 from February 29, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA,
10 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
11 Inflation, 40 C.F.R. §12.4.

12 127. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
13 § 1365(a). Continuing commission of the acts and omissions alleged above would
14 irreparably harm Plaintiffs and the citizens of the State of California, for which harm
15 they have no plain, speedy, or adequate remedy at law.

16 Wherefore, Plaintiffs pray judgment against Defendant as set forth hereafter.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Develop and/or Implement an Adequate**
19 **Storm Water Pollution Prevention Plan**
20 **in Violation of the Industrial Permit and Clean Water Act**
(Violations of 33 U.S.C. §§ 1311, 1342)

21 128. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

22 129. Plaintiffs are informed, believe, and thereon allege that Defendant has
23 failed to develop and/or implement an adequate SWPPP for the Precision Metals
24 Facility that meets the requirements set out in Section A and Provision E of the
25 Industrial Permit and Section X of the New Industrial Permit.

26 130. Defendant has been in violation of the SWPPP requirements every day
27 since at least February 29, 2011.
28

131. Defendant's violations of the Industrial Permit, New Industrial Permit and the CWA are ongoing.

132. Defendant will continue to be in violation of the SWPPP requirements every day the Precision Metals Facility operates with an inadequately developed and/or implemented SWPPP for the Precision Metals Facility.

133. Each day that Defendant operates the Precision Metals Facility without developing and/or implementing an adequate SWPPP is a separate and distinct violation of Section 301(a) of the CWA 33 U.S.C. §1311(a).

134. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 29, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

135. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiffs and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiffs pray judgment against Defendant as set forth hereafter.

FOURTH CAUSE OF ACTION

**Failure to Implement an
Adequate Monitoring and Reporting Program
In Violation of the Industrial Permit and the Clean Water Act
(Violations of 33 U.S.C. §§ 1311, 1342)**

136. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

137. Plaintiffs are informed, believe, and thereon allege that Defendant has failed to develop and/or implement an adequate M&RP for the Precision Metals Facility as required by Section B and Provision E(3) of the Industrial Permit and Section XI of the New Industrial Permit.

138. Plaintiffs are informed, believe, and thereon allege that conditions at the

1 Precision Metals Facility, as determined via sampling of storm water discharges from
2 the Precision Metals Facility, and the annual reports submitted by Defendant all
3 demonstrate that the Precision Metals Facility has not implemented an adequate M&RP
4 that meets the requirements of the Industrial Permit and New Industrial Permit.

5 139. Plaintiffs are informed, believe, and thereon allege that Defendant has
6 failed and continues to fail to collect samples from all discharge points during all storm
7 events in violation of Section B(5) of the Industrial Permit.

8 140. Plaintiffs are informed, believe, and thereon allege that Defendant has
9 failed and continues to fail to identify inadequacies in its SWPPP and BMPs.

10 141. Defendant's violations of the Industrial Permit, New Industrial Permit and
11 the CWA are ongoing.

12 142. Defendant will continue to be in violation of the Industrial Permit, New
13 Industrial Permit and the CWA each day the Precision Metals Facility operates with an
14 inadequately implemented M&RP.

15 143. Each day Defendant operates the Precision Metals Facility without
16 implementing an adequate M&RP for the Precision Metals Facility is a separate and
17 distinct violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

18 144. By committing the acts and omissions alleged above, Defendant is subject
19 to an assessment of civil penalties for each and every violation of the CWA occurring
20 from February 29, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA,
21 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
22 Inflation, 40 C.F.R. §12.4.

23 145. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
24 § 1365(a). Continuing commission of the acts and omissions alleged above would
25 irreparably harm Plaintiffs and the citizens of the State of California, for which harm
26 they have no plain, speedy, or adequate remedy at law.

27 Wherefore, Plaintiffs pray judgment against Defendant as set forth hereafter.

28 //./

FIFTH CAUSE OF ACTION

**Failure to Conduct Required Rain Event Sampling in
Violation of the Industrial Permit**

146. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

147. Plaintiffs are informed, believe, and thereon allege that Defendant is in violation of Industrial Permit, Section B(5)(c) by failing to sample for nitrate + nitrate between the 2011-2012 reporting year and September 15, 2015.

148. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 29, 2011 to the presents, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

149. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Continuing commission of the omissions alleged above would irreparably harm the Plaintiffs and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiffs pray judgment against Defendant as set forth hereafter.

SIXTH CAUSE OF ACTION

**Failure to Submit Reports in
Violation of the Industrial Permit**

150. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

151. Plaintiffs are informed, believe, and thereon allege that Defendant's annual reports did not meet the monitoring and reporting requirements of the Industrial Permit in violation of Section B(13) and B(14) of the Industrial Permit.

152. Plaintiffs are informed, believe, and thereon allege that the Defendant's annual reports were inaccurate and stated that the SWPPP's BMPs address existing potential pollutant sources when they did not, in violation of the Industrial Permit Section B.

153. Plaintiffs are informed, believe, and thereon allege that Defendant's annual reports were false and stated that the SWPPP was up to date when it was not, in

1 violation of Section B of the Industrial Permit.

2 154. Plaintiffs are informed, believe, and thereon allege that Defendant failed to
3 submit a written report identifying what additional BMPs will be implemented to
4 achieve Water Quality Standards even though Defendant discharge exceeded receiving
5 Water Quality Standards, in violation of Receiving Water Limitations C(3) and C(4) of
6 the Industrial Permit and VI.A-C. of the New Industrial Permit.

7 155. Plaintiffs are informed, believe, and thereon allege that Defendant is in
8 violation of New Industrial Permit Section XI.B.11.a for failing to sample and report the
9 required four storm events and report within 30 days to SMARTS.

10 156. Defendant has been in violation each day the Precision Metals Facility
11 operates without reporting as required by the Industrial Permit.

12 157. Defendant's violations of the Industrial Permit and the CWA are ongoing.

13 158. Every day Defendant operates the Precision Metals Facility without
14 reporting as required by the Industrial Permit is a separate and distinct violation of the
15 Industrial Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

16 159. Defendant has been in daily and continuous violation of the Industrial
17 Permit's reporting requirements every day since at least February 29, 2011.

18 160. By committing the acts and omissions alleged above, Defendant is subject
19 to an assessment of civil penalties for each and every violation of the CWA occurring
20 from February 29, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA,
21 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
22 Inflation, 40 C.F.R. §12.4.

23 161. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
24 § 1365(a). Continuing commission of the acts and omissions alleged above would
25 irreparably harm Plaintiffs and the citizens of the State of California, for which harm
26 they have no plain, speedy, or adequate remedy at law.

27 Wherefore, Plaintiffs pray judgment against Defendant as set forth hereafter.

28 **VII. RELIEF REQUESTED**

1 162. Wherefore, Plaintiffs respectfully request that this Court grant the
2 following relief:

3 a. A Court order declaring Defendant to have violated and to be in
4 violation of Section 301(a) of the CWA 33 U.S.C. § 1311(a) for its unlawful discharges
5 of pollutants from the Precision Metals Facility in violation of the substantive and
6 procedural requirements of the Industrial Permit, and as of July 1, 2015, the New
7 Industrial Permit;

8 b. A Court order enjoining the Defendant from violating the substantive
9 and procedural requirements of the New Industrial Permit;

10 c. A Court order assessing civil monetary penalties of \$37,500 per day
11 per violation for each violation of the CWA at the Precision Metals Facility occurring
12 since February 29, 2011, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil
13 Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

14 d. A Court order requiring Defendant to take appropriate actions to
15 restore the quality of waters impaired by its activities;

16 e. A Court order awarding Plaintiffs their reasonable costs of suit,
17 including attorney, witness, expert, and consultant fees, as permitted by Section 505(d)
18 of the Clean Water Act, 33 U.S.C. § 1365(d);

19 f. Any other relief as this Court may deem appropriate.

20 Dated: August 17, 2016

21 Respectfully submitted,

22 COAST LAW GROUP LLP

23
24 By: s/Livia Borak

25 LIVIA BORAK

26 Attorneys for Plaintiffs

27 COASTAL ENVIRONMENTAL

28 RIGHTS FOUNDATION

 E-mail: livia@coastlawgroup.com

SAN DIEGO COASTKEEPER

By: s/Matt O'Malley
MATT O'MALLEY
Attorney for Plaintiffs
SAN DIEGO COASTKEEPER
E-mail: matt@sdcoastkeeper.org

EXHIBIT A

60 Day Notice Letter



February 29, 2016

VIA CERTIFIED MAIL

C T Corporation System
Agent for Service of Process
Precision Metal Products, Inc.
818 West Seventh St Ste. 930
Los Angeles CA 90017

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Darrow
Precision Metal Products, Inc.
850 W Bradley Ave
El Cajon California 92020

Ronald A. Recht
Agent for Service of Process
Food Partners, LLC
501 Santa Monica Blvd. #312
Santa Monica, CA 90401

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Precision Metal Products Violations of General Industrial Permit**

Dear Mr. Darrow:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) and San Diego Coastkeeper (Coastkeeper) regarding Precision Metal Products, Inc.'s violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF and Coastkeeper's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for the Precision Metal Products, Inc. facility located at 850 W. Bradley Ave, El Cajon, CA, 92020 ("Facility" or "Precision Metal"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter

¹ On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments became effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

Notice of Intent to Sue: Clean Water Act
Precision Metal
February 29, 2016
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provides notice of Precision Metal's Clean Water Act violations and CERF and Coastkeeper's intent to sue.

I. Citizen Groups

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. CERF's mailing address is 1140 S. Coast Highway 101, Encinitas, CA 92024.

Coastkeeper is a nonprofit organization committed to protecting and restoring the San Diego region's water quality and supply. A member of the international Waterkeeper Alliance, Coastkeeper's main purpose is to preserve, enhance, and protect San Diego's waterways, marine sanctuaries, coastal estuaries, wetlands, and bays from illegal dumping, hazardous spills, toxic discharges, and habitat degradation. Coastkeeper implements this mission through outreach, education, activism, participation in governmental hearings, and prosecuting litigation to ensure that San Diego's beaches, bays, coastal waters and tributary streams and rivers meet all substantive water quality standards guaranteed by Federal, State, and local statutes and regulations. Coastkeeper's office is located at 2825 Dewey Road, Suite 200 in San Diego, California 92106.

Members of CERF and Coastkeeper use and enjoy the waters into which pollutants from Precision Metal's ongoing illegal activities are discharged, namely Forester Creek, San Diego River, and eventually the Pacific Ocean (Receiving Waters). The public and members of CERF and Coastkeeper use these Receiving Waters to fish, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Precision Metal Facility affects and impairs each of these uses. Thus, the interests of CERF and Coastkeeper's members have been, are being, and will continue to be adversely affected by Precision Metal Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge.

The Precision Metal Owners and/or Operators conduct steel fabrication at the Facility, producing structural steel columns, beams, and braces as well as fences, gates, stairs, railings, screens, and canopies. "In addition to forging, [Precision Metal] conducts support operations consisting of machining, heat treating and surface finishing." (SWPPP, p. 2). The Facility SIC Code is 3462, Iron and Steel Forgings and 3463, Nonferrous Forgings.

Precision Metal enrolled as a discharger subject to the General Industrial Permit on October 3, 2007 for its facility located at 850 W. Bradley Ave, El Cajon, CA 92020. Precision Metal enrolled under the New Industrial Permit on January 27, 2015, WDID Number 9 371021188.

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Precision Metal
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Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. (See New Industrial Permit, §1.A.8. [dischargers must “comply with all requirements, provisions, limitations, and prohibitions in this General Permit.”]). Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New Industrial Permit §XXI.A.). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. As an enrollee, Precision Metal has a duty to comply with the General Industrial Permit and New Industrial Permit and is subject to all of the provisions therein.

B. Failure to Monitor and Report

The Precision Metal Owners and/or Operators have failed to report all monitoring data as required under the New Industrial Permit, which became effective July 1, 2015. Under the New Industrial Permit, Precision Metal is required to sample two qualifying storm events during the first half of the reporting period, and two during the latter half. All monitoring data must be uploaded to SMARTS within 30 days of obtaining all results for each sampling event. (New Industrial Permit, §XI.B.11.a.). However, the Precision Metal Owners and/or Operators failed to upload monitoring data from four sampling events from as early as September 15, 2015 until February 23, 2016. Thus, the Precision Metal Owners and/or Operators failed to upload four separate monitoring data sets in a timely manner, in violation of the New Industrial Permit.

Further, though the Facility SWPPP, General Industrial Permit and New Industrial Permit require monitoring of nitrates, the Precision Metal Owners and/or Operators have consistently failed to sample for Nitrate and Nitrite Nitrogen during most sampling events. (See SWPPP, p. 15). After the 2011-2012 wet season, the Precision Metal Owners and/or Operators inexplicably ceased monitoring and reporting for Nitrate or Nitrite until approximately September 15, 2015.

The Precision Metal Owners and/or Operators had numerous opportunities to sample but failed to do so. They are thus subject to penalties in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

C. The Precision Metal Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

The Precision Metal Owners and/or Operators’ monitoring reports indicate consistent exceedances and violations of the General Industrial Permit. Discharge Prohibition A(2) of the General Industrial Permit and New Industrial Permit Sections III.C-D prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges which cause or contribute to an exceedance of any water quality standards or applicable Basin Plan water quality

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Precision Metal
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standards. (See New Industrial Permit Receiving Water Limitations VI.A-C). In addition, Receiving Water Limitation VI.C. of the New Industrial Permit prohibits discharges that contain pollutants in quantities that threaten to cause pollution or a public nuisance.

The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard. (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards. (General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C); New Industrial Permit, §XX.B.). The Precision Metal Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Facility's SWPPP pursuant to General Industrial Permit section (C)(3) and New Industrial Permit Section X.B.1.

As demonstrated by sample data submitted by Precision Metal, from enrollment on October 3, 2007 through the present, the Precision Metal Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Precision Metal Facility's sampling data reflects numerous discharge violations (see below). Precision Metal's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Precision Metal Facility continuously discharges contaminated storm water during rain events which have not been sampled.

No.	Date	Discharge Point	Parameter	Units	Result	Benchmark/WQO
1	1/6/2016	2	Zinc	mg/L	.380	.12
2	12/1/2015	1	Zinc	mg/L	.21	.12
3	12/1/2015	1	Iron	mg/L	1.56	1.0
4	12/1/2015	1	Aluminum	mg/L	1.57	.75
5	12/1/2015	2	Zinc	mg/L	.47	.12
6	10/5/2015	1	Iron	mg/L	4.68	1.0
7	10/5/2015	1	Aluminum	mg/L	6.28	.75
8	10/5/2015	1	Zinc	mg/L	1.84	.12
9	10/5/2015	2	Iron	mg/L	1.98	1.0
10	10/5/2015	2	Aluminum	mg/L	1.54	.75
11	10/5/2015	2	Zinc	mg/L	.32	.12
12	9/15/2015	1	Iron	mg/L	1.85	1.0

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13	9/15/2015	1	Aluminum	mg/L	1.85	.75
14	9/15/2015	1	Zinc	mg/L	.809	.12
15	9/15/2015	1	Nitrate + Nitrite (N)	mg/L	5.68	.68
16	9/15/2015	2	Iron	mg/L	3.27	1.0
17	9/15/2015	2	Aluminum	mg/L	5.12	.75
18	9/15/2015	2	Zinc	mg/L	8.50	.12
19	9/15/2015	2	Nitrate + Nitrite (N)	mg/L	2.78	.68
20	1/27/2015	1	Zinc	mg/L	4.37	.12
21	1/27/2015	1	Iron	mg/L	14.9	1.0
22	1/27/2015	1	Aluminum	mg/L	5.19	.75
23	1/27/2015	1	TSS	mg/L	104	100
24	1/27/2015	2	Zinc	mg/L	2.02	.12
25	1/27/2015	2	Iron	mg/L	16.8	1.0
26	1/27/2015	2	Aluminum	mg/L	14.6	.75
27	1/27/2015	2	TSS	mg/L	307	100
28	12/4/2014	1	Zinc	mg/L	1.28	.12
29	12/4/2014	1	Iron	mg/L	1.24	1.0
30	12/4/2014	2	Zinc	mg/L	.492	.12
31	4/1/2014	1	Zinc	mg/L	.936	.12
32	4/1/2014	2	Zinc	mg/L	.286	.12
33	4/1/2014	2	Iron	mg/L	1.97	1.0
34	4/1/2014	2	Aluminum	mg/L	1.97	.75
35	2/27/2014	1	Zinc	mg/L	2.02	.12
36	2/27/2014	1	Iron	mg/L	4.18	1.0
37	2/27/2014	1	Aluminum	mg/L	5.26	.75
38	2/27/2014	2	Zinc	mg/L	.438	.12
39	2/27/2014	2	Iron	mg/L	5.05	1.0
40	2/27/2014	2	Aluminum	mg/L	5.59	.75
41	1/25/2013	1	Zinc	mg/L	1.81	.12
42	1/25/2013	1	Iron	mg/L	5.41	1.0
43	1/25/2013	1	Aluminum	mg/L	3.09	.75
44	1/25/2013	1	Copper	mg/L	.079	.013
45	1/25/2013	2	Zinc	mg/L	.49	.12
46	1/25/2013	2	Iron	mg/L	5.05	1.0
47	1/25/2013	2	Aluminum	mg/L	4.57	.75
48	1/25/2013	2	TSS	mg/L	131	100
49	12/13/2012	1	Zinc	mg/L	.86	.12
50	12/13/2012	2	Zinc	mg/L	.26	.12
51	2/27/2012	1	Zinc	mg/L	.49	.12
52	2/27/2012	1	Iron	mg/L	3.57	1.0

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53	2/27/2012	1	TSS	mg/L	141	100
54	2/27/2012	2	Copper	mg/L	.05	.013
55	2/27/2012	2	Zinc	mg/L	.49	.12
56	2/27/2012	2	TSS	mg/L	163	100
57	5/18/2011	1	Zinc	mg/L	.684	.12
58	5/18/2011	1	Iron	mg/L	1.93	1.0
59	5/18/2011	1	Aluminum	mg/L	1.35	.75
60	5/18/2011	2	Zinc	mg/L	.209	.12
61	5/18/2011	2	Iron	mg/L	1.65	1.0
62	5/18/2011	2	Aluminum	mg/L	1.68	.75
63	3/22/2011	1	Zinc	mg/L	.678	.12
64	3/22/2011	2	Iron	mg/L	1.02	1.0
65	10/6/2010	1	Aluminum	mg/L	1.89	.75
66	10/6/2010	1	Zinc	mg/L	7.46	.12
67	10/6/2010	1	Iron	mg/L	2.52	1.0
68	10/6/2010	1	Nitrate + Nitrite (N)	mg/L	1.23	.68
69	10/6/2010	2	Aluminum	mg/L	1.77	.75
70	10/6/2010	2	Zinc	mg/L	1.06	.12
71	10/6/2010	2	Iron	mg/L	3.57	1.0
72	10/6/2010	2	Nitrate + Nitrite (N)	mg/L	.77	.68

D. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements for the General Industrial Permit is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New Industrial Permit §X.). Precision Metal has not developed an adequate SWPPP as required by the General Permit or New Industrial Permit, with many of the required elements noticeably absent from the Precision Metal Facility SWPPP. (New Industrial Permit, §X.A.1-10).

For example, the SWPPP does not include a monitoring plan that complies with the New Industrial Permit. (New Industrial Permit, §XI.). The SWPPP incorrectly identifies qualifying storm events and monitoring frequency pursuant to the old monitoring requirements under the General Industrial Permit. (SWPPP, p. 15). The SWPPP must be updated to require sampling after 48 hours with no discharge (as opposed to 3 working days) at a frequency of two events from July 1 to December 31st and two events from January 1 to June 30th (instead of two events per year total).

The latest Precision Metal SWPPP, uploaded to SMARTS on September 10, 2015, also fails to identify the receiving waters (Forester Creek and San Diego River) and fails to identify the impaired status of Forester Creek. Thus, the SWPPP fails to evaluate the Facility's potential contribution of pollutants for which these receiving waters are listed. Forester Creek is on the 303(d) list as impaired for numerous constituents, including fecal coliform, selenium, total dissolved solids, and pH. The San Diego River is also impaired for numerous constituents, including toxicity.

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The latest SWPPP also fails to account for the numerous and repeated violations identified by Precision Metal's monitoring data – ensuring these violations continue. The SWPPP is therefore inadequate. (See New Industrial Permit §I.E.37. [“Compliance with water quality standards may, in some cases, require Dischargers to implement controls that are more protective than controls implemented solely to comply with the technology-based requirements in this General Permit.”]).

Every day the Precision Metal Owners and/or Operators operate the Facility without an adequate SWPPP, is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Precision Metal Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit and New Industrial Permit since at least February 29, 2011. These violations are ongoing and the Precision Metal Owners and/or Operators will continue to be in violation every day they fail provide an adequate SWPPP for the Facility. Thus, the Precision Metal Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,825 violations of the General Industrial Permit and the Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF and Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF and Coastkeeper are willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF and Coastkeeper will move forward expeditiously with litigation.

Precision Metal must develop and implement an updated SWPPP, install BMPs to address the numerous and ongoing water quality violations, and implement a robust monitoring and reporting plan. Should the Precision Metal Owners and/or Operators fail to do so, CERF and Coastkeeper will file an action against Precision Metal for its prior, current, and anticipated violations of the Clean Water Act. CERF and Coastkeeper's action will seek all remedies available under the Clean Water Act § 1365(a)(d). CERF and Coastkeeper will seek the maximum penalty available under the law which is \$37,500 per day.

CERF and Coastkeeper may further seek a court order to prevent Precision Metal from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if the Facility further discharges pollutants into Receiving Waters. The cessation of the Facility's discharge will not cause substantial harm to others, and the public interest would be served in preventing discharge of pollutants into receiving waters.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF and Coastkeeper will seek to recover all of their costs and fees pursuant to section 505(d).

IV. Conclusion

CERF and Coastkeeper have retained legal counsel to represent it in this matter. Please direct all communications to CERF and Coastkeeper's legal counsel:

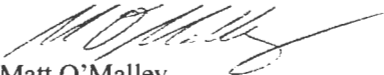
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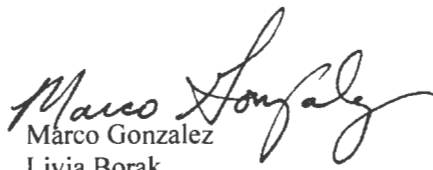
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If you wish to pursue settlement discussions in the absence of litigation, please contact Coast Law Group LLP and San Diego Coastkeeper immediately.

Sincerely,


Matt O'Malley
Attorney for San Diego Coastkeeper


Marco Gonzalez
Livia Borak
Attorneys for Coastal Environmental
Rights Foundation

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